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**From:** Siegal, Tod [Siegal.Tod@epa.gov]  
**Sent:** 6/30/2017 10:23:34 PM  
**To:** Joffe, Brian [Joffe.Brian@epa.gov]  
**Subject:** RE: DB article on OST filing

Thanks Brian.

Tod Siegal  
U.S. EPA, Office of General Counsel  
Cross-Cutting Issues Law Office  
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**From:** Joffe, Brian  
**Sent:** Friday, June 30, 2017 3:09 PM  
**To:** Maher, Lauren <Maher.Lauren@epa.gov>; Siegal, Tod <Siegal.Tod@epa.gov>  
**Subject:** FW: DB article on OST filing

Hi Lauren – per our conversation I’m forwarding the article I mentioned. Tod – we thought you’d be interested in this development as well.

Brian

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**From:** Matsumoto, Kimi  
**Sent:** Thursday, June 29, 2017 7:22 AM  
**To:** Chin, Lucita <Chin.Lucita@epa.gov>; Sutin, Elyana <Sutin.Elyana@epa.gov>; Boydston, Michael <Boydston.Michael@epa.gov>; Joffe, Brian <Joffe.Brian@epa.gov>  
**Subject:** DB article on OST filing

**Tribe Asks DC Circ. To Undo License For SD Uranium Mine**

Share us on: By Christine Powell

Law360, New York (June 28, 2017, 6:04 PM EDT) -- The Oglala Sioux Tribe pressed the D.C. Circuit on Tuesday to revoke a license given by the federal government to the company behind a proposed uranium mine, questioning why it has been left intact when related environmental and historic preservation issues have been identified.

The tribe, which has been fighting Powertech (USA) Inc.'s bid to mine roughly 13,000 acres of land in western South Dakota for years, filed an opening brief in its challenge claiming that the U.S. Nuclear Regulatory Commission's environmental analysis, record of decision and license issuance flout the National Environmental Policy Act and the National Historic Preservation Act.

The Oglala Sioux said the NRC had affirmed its Atomic Safety and Licensing Board's finding that the environmental analysis did not sufficiently consider the so-called Dewey-Burdock in-situ uranium recovery project's impacts on Native American religious, historic and cultural resources and that required meaningful government-to-government consultation between the tribe and the commission had not occurred.

"Despite this finding of violations and a lack of compliance with both NEPA and the NHPA, the NRC nevertheless allowed the [record of decision] and the license itself to stand," the tribe said, urging the appeals court to vacate all three documents and order the commission to "comply with its statutory duties."

Among other things, the Oglala Sioux also claimed that the NRC failed to adequately scrutinize effects associated with storing, moving and disposing radioactive waste, failed to require the collection of baseline water quality data and failed to mandate a requisite discussion of means for mitigating the impact on cultural sites and the environment and how effective those means are.

The tribe further argued that a December order from the NRC finalized the license issuance and is thus a final agency action under the Hobbs Act, so the D.C. Circuit has jurisdiction to consider its claims.

The NRC previously said in a motion to dismiss that it is still addressing challenges raised by the Oglala Sioux that could result in the license being modified or revoked, meaning that it has not yet issued a final order reviewable under the Hobbs Act and that the appeals court should not grant the tribe's petition for review.

Powertech, which has intervened, chimed in to support the NRC on its efforts to toss the case, pointing out that there was no final decision on the entire underlying proceeding and there are ongoing discussions and negotiations to cure the deficiencies identified by the ASLB and sustained by the commission.

Then, in a May order, the D.C. Circuit referred the NRC's dismissal bid to the appellate panel that will consider the merits of the dispute, directing the parties to incorporate their arguments concerning whether the row should be nixed into their briefs.

According to Powertech parent company Azarga Uranium Corp.'s website, construction on the Dewey-Burdock project has not yet begun, as certain required licenses and permits are still being acquired.

The Oglala Sioux has said that the land the project would sit upon, which lies in South Dakota's Fall River and Custer counties, is within the tribe's traditional aboriginal territory and full of cultural and historic resources, including burial sites.

Jeffrey C. Parsons of the Western Mining Action Project, who represents the tribe, told Law360 on Wednesday that, "from the start, the tribe has simply sought NRC compliance with the federal laws aimed at protecting Sioux cultural resources and ground water quality. Unfortunately, NRC staff's and Powertech's refusals to follow the law or rescind the NRC license even where violations are found forces the tribe to continue its fight in federal court against this ill-advised project."

Representatives for Powertech said they were reviewing the tribe's brief. Representatives for the NRC declined to comment.

The tribe is represented by Jeffrey C. Parsons of the Western Mining Action Project and Travis E. Stills of Energy & Conservation Law.

The federal government is represented by NRC Solicitor Andrew P. Averbach and Senior Attorney James E. Adler, as well as Lane N. McFadden of the U.S. Department of Justice.

Powertech is represented by Anthony J. Thompson and Christopher S. Pugsley of Thompson & Pugsley PLLC.

The case is Oglala Sioux Tribe v. U.S. Nuclear Regulatory Commission et al., case number 17-1059, in the U.S. Appeals Court for the District of Columbia Circuit.

--Additional reporting by Adam Lidgett, Keith Goldberg and Michael Phillis. Editing by Katherine Rautenberg.

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